

Amendments to the Drawings:

The previously submitted sheet of drawings which included new Figs. 5-7 is hereby deleted. Deleted Figs. 5-7 were submitted on a single drawing sheet. Thereby upon the deletion of Figs. 5-7, drawing sheet 3 is also deleted. No substitute sheets are believed to be required in this amendment. By this amendment, only the originally filed drawing sheets remain in this application.

REMARKS

Claims 1-9, 11, 14-18, and 46-52, and 55-58 are pending in this application. Claims 10, 12, 13, 19-45, and 53-54 are canceled without prejudice. Applicant reserves the option to further prosecute the same or similar claims as originally presented at a later time. Claims 55-58 are newly presented herein.

Objections

In the Non-Final Office Action dated August 25, 2005, the Examiner disapproved the drawings under 37 CFR 1.121(a)(6) as allegedly introducing new matter. In support of this allegation, the Examiner stated that the original disclosure does not support the showing of a container having three compartments, two of equal size, and one of a larger size. In view of the Examiner's disapproval of the amended drawings, the Examiner also objected to the drawings under 37 CFR 1.83(a) for not illustrating every feature of the invention specified in the claims.

Applicant traverses the Examiner's position regarding the drawings. Specifically, Applicant respectfully submits that the features of a ventable area in a sidewall and ventable areas aligned with a compartment of the container are explicitly disclosed in the written description of the specification as originally filed, and therefore do not constitute new matter.

Additionally, Applicant traverses the Examiner's new matter objection due to the incompatible positions set forth by the Examiner in the Final Office Action dated March 4, 2005, and the Non-Final rejection of August 25, 2005. That is the objections, and rejections of the Final Office Action dated March 4, 2005 are inconsistent and contradictory to the withdrawal of the 35 USC § 112 rejection and disapproval of the amendments to the drawings and specification set forth in the Office Action dated August 25, 2005.

Rather than expend further resources directed to this issue, Applicant, in the interest of expediting prosecution, hereby cancels dependent claims 44, 53, and 54, deletes Figures 5-7 and removes any reference thereto from the specification.

These amendments are made solely to expedite prosecution of the present application and do not constitute an acquiescence to any reference identified or objection raised by the Examiner. Applicant reserves the option and opportunity to pursue the subject matter of the canceled claims by this or another application.

Rejections

In the Office Action, the Examiner rejected claims 1-9, 11, 14, 16-18, and 45-51 under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 3,955,710 to Commisso (hereinafter, "Commisso"). The Examiner further rejected claims 1-9, 11, 14-18 and 45-51 under 35 U.S.C. § 103(a) as allegedly being obvious over Commisso in view of U.S. Patent No. 3,851,789 to Case et al. (hereinafter, "Case"). The Examiner also rejected claim 44 as allegedly being obvious over Commisso and further in view of U.S. Patent No 5,947,321 to Vadney (hereinafter, "Vadney"). The Examiner also rejected claim 52 as allegedly being obvious over Case in view of Commisso and further in view of U.S. Patent No 4,535,889 to Terauds (hereinafter, "Terauds") or Vadney. Applicant respectfully traverses each of these rejections.

Independent claim 1, as amended, is directed to an optional venting container comprising a base and a lid releasably latched to the base, with at least one ventable area formed therein. The ventable area has a perimeter defined by a cut consisting of a first interruption defining a hinge portion and a second interruption spaced substantially from the first interruption to define a single frangible portion. The ventable area is adapted to form a vent by applying pressure within the perimeter to rupture the single frangible portion. For purposes of illustration and not limitation, Figure 2 of the present application discloses a representative embodiment of an optional venting container (10) including at least one ventable area (30) including perimeter (30a-c) defined by a cut, which consists of a first interruption to define hinge portion (e.g., between 30d and 30e) and a second interruption substantially spaced from the first interruption to define a single frangible portion (30g).

The containers of Commisso, Case, Terauds, and Vadney individually or in combination do not disclose, among other things, an optional venting container having at least one ventable area defined by a "cut consisting of a first interruption defining a hinge portion and a second interruption spaced substantially from the first interruption to define a single frangible portion, the ventable area being adapted to form a vent by applying pressure within the perimeter to rupture the single frangible portion."

Indeed, and as recognized by the Examiner, Case et al. does not even disclose a container having a ventable area. Commisso, on the other hand, simply discloses a container having finger apertures. The finger apertures 15 depicted in the figures of Commisso are formed by a

continuous radial cut 18 extending from (and in fact beyond) one side of hinge 17 to the other side of hinge 17. Although Commisso does mention that a series of perforations can be used in place of the radial cut (col. 2, lines 16-22), there is no disclosure or suggestion by Commisso of a ventable area defined by a “cut consisting of a first interruption defining a hinge portion and a second interruption spaced substantially from the first interruption to define a single frangible portion, the ventable area being adapted to form a vent by applying pressure within the perimeter to rupture the single frangible portion.” As previously noted, the perforations of Commisso do not define a hinge as claimed. Furthermore, the closely spaced perforations of Commisso are not “spaced substantially” from one another, and certainly do not constitute a single frangible portion.

Likewise, neither Terauds nor Vadney disclose or suggest the claimed features. Furthermore, there is no suggestion or motivation provided by the prior art of record to combine the finger openings of Commisso with the container of Case et al.

Consequently, the prior art of record, individually and in combination, does not disclose or suggest the optional venting container as recited in amended claim 1 of the present application. Independent claim 1, and claims 2-9, 11, 14-18 and 46-52, and 55-58 depending therefrom, are allowable over the prior art of record.

Moreover, dependent claims 2-9, 11, 14-18 and 46-52, and 55-58 are further allowable for reciting additional features not disclosed by the prior art relied upon by the Examiner. For example, dependent claims 2 and 3 further recite the material of construction of the base and the lid of the container. Dependent claims 4-8 and 14-18, further specify the configuration and shape of the container, as well as the number and locations of the ventable areas. Dependent claims 9, 11, 14 and 56-58 are further directed to the configuration of the ventable area. Claim 46 further recites that the frangible portion is disposed opposite the hinge portion. Dependent claims 47-51 further specify the depth of the cut defined along the perimeter of the ventable area. Dependent claim 52 further recites the location of the ventable areas of the container. Newly added dependent claim 55 further recites that the at least one ventable area is formed in the angled surface of the top wall.

None of the prior art of record, individually or in combination, discloses or suggests an optional venting container have each and every feature as claimed. Thus, at least for these

reasons, dependent claims 2-9, 11, 14-18 and 46-52, and 55-58 are further allowable over the prior art relied upon by the Examiner.

Applicant respectfully submits that this patent application is in condition for allowance, and respectfully requests a timely notice of allowance.

Formal Request for Interview

In the event that the Examiner does not find the application to be in condition for allowance, Applicant respectfully requests an interview with the Examiner to discuss the present application and the prior art of record. Applicant's Attorney Daniel Hulseberg may be reached at telephone number (212) 294-3310 to schedule a mutually convenient date and time and to provide assistance or additional information as required.

CONCLUSION

On the basis of the foregoing Amendments and Remarks, Applicant respectfully submits that the pending claims of the present application are allowable over the prior art of record. Applicant thus respectfully requests that the previous objections and rejections be withdrawn, and that claims 1-9, 11, 14-18 and 46-52, and 55-58 be allowed by the Examiner. Favorable consideration and timely allowance of this application are respectfully requested.

Applicant authorizes the Commissioner to charge any additional fees and/or credit any overpayments associated with this paper to Winston & Strawn Deposit Account No. 50-1814, Ref. No. 86012-36400-USPT. Further, if a fee is required for an extension of time under 37 C.F.R. § 1.136 not provided for above, or in the attached Petition, Applicant requests such extension and authorizes the charging of the extension fee to Winston & Strawn Deposit Account No. 50-1814, Ref. No. 86012-36400-USPT.

Respectfully submitted,

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Date

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